



New Construction Procurement Laws: Will They Make Your Life Easier?

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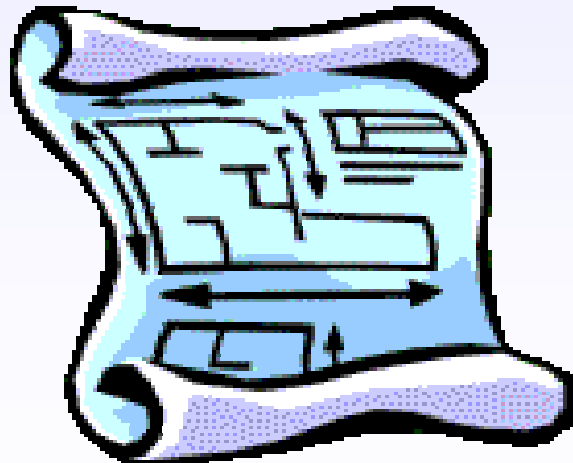
Overriding Themes

- Qualifications rather than costs
- Negotiations rather than bidding
- Short list selection
- Objectives: faster, cheaper, more responsive



Traditional Arizona Method of Public Construction:

Design-Bid-Build



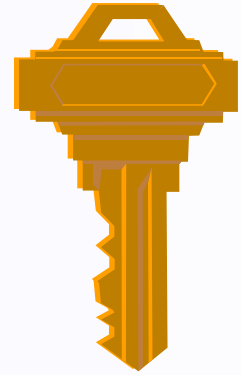


New methods authorized by Legislature

- Design-build
- Construction manager at risk
- Job-order contracting



Design-build



- Turn-key project
- Design-builder designs and builds project
- Best suited for sophisticated owner



Construction-manager at risk

- Separate designer and builder
- Architect/engineer designs
- General contractor builds
- General contractor can be hired simultaneously with architect
- General contractor services in design phase:
 - Plans constructability review
 - Value engineering
 - Scheduling and budgeting
 - Advice on substitutions of materials and equipment



Job-order contracting

- Form of indefinite quantities contract
- Contractor on call for smaller jobs
- \$750,000 aggregate limit



Contract Awards under the State Procurement Code:

- School districts may use A.R.S. § 15-213 (K) temporarily
- A.R.S. § 41-2579 authorizes use of any of the four methods
- Contract selection methods:
 - For design-bid-build:
 - Selection of the contractor by competitive sealed bids (A.R.S. § 41-2533)
 - Selection of the A/E, by one of the short-list methods



Contract Awards under the State Procurement Code: (continued)

- For Design-Build and Job Order Contracting:
 - Short list preparation
 - Negotiations or RFP to short-list candidates
- For CM at Risk
 - Short list preparation only
 - Negotiations with short list candidates



Short-list preparation

- Shift focus from cost to qualifications
- Distinction between projects greater or lesser than \$100,000



Projects less than \$100,000

- Governed by A.R.S. § 41-2578 (C)(1)
- Submission of Statements of Qualifications
 - Annual registry of interested contractors
 - Plus contractors responding for this project
- Formation of Selection Committee



Projects less than \$100,000 (continued)

- Selection Committee's Evaluation
 - Review statements of qualifications
 - Discussions with at least three candidates (if possible)
 - Consideration of competence and qualifications only
 - At this point: no consideration of fees, price, man-hours, or other cost information
 - Preparation of short list of at least three candidates, ranked in order of qualifications



Projects greater than \$100,000

- Governed by A.R.S. § 41-2578(C)(2)
- Agency publishes request for qualifications
- Must use format set forth in A.R.S. § 41-2533(C)
- Selection committee appointed



Projects greater than \$100,000 (continued)

- Selection committee evaluations:
 - Review statements of qualifications
 - Discussions with three to five candidates (if notice of intent to do so was published in the RFQ)
 - Discussions center on candidates' proposed performance methods
 - Consideration of competence and qualifications only
 - At this point: no consideration of fees, price, man-hours, or other cost information
 - Preparation of short list of no more than three candidates, ranked in order of preference



Selection from the short list

- Negotiations or RFP for design-build or job-order contracting 
- Negotiations only for CM at Risk



Negotiations with short-list candidates

- Governed by A.R.S. § 41-2578 (E)
- Conducted by procurement officer
- Must begin with top-ranked candidate
- Negotiation factors
 - compensation
 - other contract terms



Negotiations with short-list candidates

(continued)

- Procurement officer evaluation factors:
 - estimated project value
 - project scope
 - professional services or construction services to be rendered
 - If no agreement is reached, cancel and start over
 - For construction, must reach a fixed price or GMP



RFP to short-list candidates

- Governed by A.R.S. § 41-2578(F)
- Procurement officer issues RFP to short-list candidates
- Factors which must be covered:
 - project schedule
 - project budget
 - definition of scoring method
 - must call for a technical proposal and price proposal
 - whether discussions with candidates will take place



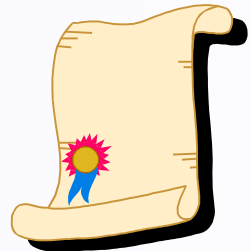
RFP to short-list candidates (continued)

- Discussion process
 - If published, candidates submit a preliminary technical proposal only
 - Selection committee (not procurement officer) centers discussions on clarifying the preliminary technical proposal and responsiveness of the proposal
 - Candidates submit final technical proposals and price proposals



RFP to short-list candidates (continued)

- Scoring
 - Committee scores final technical proposals
 - Then:
 - scores price proposals
 - scores overall proposals
- Award: Procurement officer “shall” award to responsive and responsible offeror with highest score





Miscellaneous provisions

- Purchasing agency retains rights to cancel or reject all or some of proposals if it is in the agency's best interest
- For design-build only:
 - Fee to unsuccessful offerors who made the short list
 - If no award is made, fee to all short-list candidates
 - Fee must be published in advance in RFP
 - Equals stated percentage, not less than 0.2% of project budget
 - Agency gets right to use ideas or info in proposals
 - Short-list candidate can reject fee and keep use of ideas and info

Miscellaneous provisions (continued)

- Annual report to the Governor:
 - Due each January 15
 - Covers usage of design-build, CM at risk, and job-order contracting preceding year





Effect of new project delivery methods on bonds

- Bid bonds:
 - Design-bid-build: 10% of the bid contract price
 - Design-build: 10% of the agency's budget for the project, excluding any amounts budgeted for finance, maintenance, operations, design, preconstruction, and similar services
 - Job-order contracting: 10% of the project budget for the first year, with the same exclusions



Effect of new project delivery methods on bonds (continued)

- Payment bonds:
 - Design-bid-build: 100% of the contract price
 - Design-build at CM at Risk: 100% of construction price, excluding any amount for finance, maintenance, operations, design, preconstruction, and similar services
 - Job-order contracting: 100% of agency budget



Effect of new project delivery methods on bonds (continued)

- Performance bonds:
 - Design-bid-build: 100% of contract price
 - Design-build and CM at Risk: 100% of construction price, same exclusions
 - Job-order contracting: 100% of agency budget, same exclusions, for the entire contract, or year-by-year



Effect on Licensing

- Contractor for design-build, CM at Risk, and job-order contracting need not be registered as an A/E, so long as party performing such services is registered
- Contractor for design-build, CM at Risk, and job-order contracting need not be registered as a licensed contractor, so long as party performing such services is licensed